IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35226

ACTION COLLECTION SERVICE, INC.,	)	**2009 Unpublished Opinion No. 524**
	)	
Plaintiff-Respondent,	)	**Filed: July 8, 2009**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
DONALD JACKSON and JANEEN JACKSON,	)	**THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY**
	)	
Defendants-Appellants.	)	
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge. Hon. Christopher Bieter, Magistrate.

Order reversing magistrate's grant of summary judgment to Defendants, and ordering judgment for Plaintiff, reversed and case remanded.

Strother Law Office; Jeffrey A. Strother, Boise, for appellant. Jeffrey A. Strother argued.

Shearer & Bonney; Shaun R. Bonney, P.C., Boise, for respondent. Shaun R. Bonney argued.

GUTIERREZ, Judge

Donald and Janeen Jackson appeal from the district court's order reversing the magistrate's grant of summary judgment. For the reasons set forth below, we reverse and remand for further proceedings.

I.
BACKGROUND

In October 2001, Donald Jackson was injured in a motor vehicle accident. He and Janeen Jackson (collectively Jackson) had both automobile and health insurance at the time of the accident. On November 21, 2001, Jackson sought treatment from Intermountain Orthopaedics (Intermountain) for a shoulder injury sustained in the accident. He received treatment from

Intermountain through January 30, 2002. Prior to his first treatment, Jackson signed a patient authorization and assignment. That agreement states, in relevant part:

> Please remember that insurance is considered a method of reimbursing the patient for fees paid to the doctor and is not a substitute for payment. Some companies pay fixed allowances for certain procedures, and others pay a percentage of the charge. It is your responsibility to pay any deductible amount, co-insurance, any other balance not paid for by your insurance. If your insurance has not paid your account in full within sixty days of billing, we will require the balance to be paid by you. . . .
> . . . .
> If this account is assigned to an attorney for collection and / or suit, the practice shall be entitled to reasonable attorney's fees and costs of collection.
> . . . .
> I request that payment of authorized benefits be made on my behalf. I assign the benefits payable to which I am entitled including medicare, private insurance and other health plans to Intermountain Orthopaedics.
> This assignment will remain in effect until revoked by me in writing. . . . I understand that I am financially responsible for all charges whether or not paid by said insurance.
> I hereby authorize the practice to appeal any incorrect insurance payment. I agree to the assignments and financial responsibilities shown above.

During the course of treatment, Jackson made three payments to Intermountain, and his health insurance company, Lifewise, made one in the amount of $1,112.68. In April 2002, Lifewise sent a second payment to Intermountain, which reduced the total balance due on the account to $2,274.43. In May, Intermountain recorded with the Ada County Recorder a claim of lien for medical care against Jackson and his personal injury attorney for the full amount still due plus interest, attorney fees and filing fees. Several months later, in August, Intermountain credited Jackson's account for a multi-procedure discount, reducing the outstanding balance by $825. When Jackson's lawsuit against the other driver in the accident settled in February 2003, he paid Intermountain the $1,449.43 principal still due on his account. His attorney in the personal injury case sent a letter with the check indicating that the check "represent[ed] full and final payment on behalf of Don Jackson." Intermountain filed a release of lien for medical care on May 20, 2003. The release stated:

> Know all men by these presents that Intermountain Orthopaedics ("Lienor"), of the County of Ada, State of Idaho, does hereby certify and declare that a certain Claim of Lien for Medical Care, bearing the date May 14, 2002 and name Donald Allen Jackson, made and executed by Lienor and filed in the office of the County Recorder of the County of Ada, State of Idaho, on May 16, 2002 as

> Instrument No. 102055978, together with the debt thereby secured, is satisfied, discharged and released.

In late September 2003, Intermountain received a demand from Lifewise for the return of the $1,112.68 payment made in January 2002. Lifewise had determined that Liberty Mutual, Jackson's car insurance provider, was the primary insurer for Jackson's injuries. Intermountain returned the money to Lifewise in October 2003, and then sought payment from Jackson on the new outstanding balance. Jackson refused to pay Intermountain and the account was assigned to Action Collection Service, Inc. (Action) in April 2004; a complaint was filed the following April of 2005. Action filed a motion for summary judgment, which was partially granted following a hearing. Jackson did not contest three of Action's claims relating to debts owed to other companies; only the debt to Intermountain remained for trial. In May 2005, the parties filed stipulated facts followed by cross-motions for summary judgment. Jackson asserted that Action was precluded from collecting on the account by the doctrine of accord and satisfaction, because of waiver, and in the interests of justice and fairness. Action asserted that recovery was proper based on Jackson's contract with Intermountain. The magistrate granted Jackson's motion for summary judgment, but not on grounds raised by Jackson. The magistrate rejected the doctrine of accord and satisfaction on the rationale that there was no amount in dispute at the time Jackson submitted his final check in return for Intermountain's release of its lien. The magistrate also concluded that the release of lien was not a waiver. However, the magistrate applied the doctrine of voluntary payment and determined that Intermountain was not allowed to recover money from Jackson after voluntarily refunding money to Lifewise.

Action appealed to the district court, contending that the doctrine of voluntary payment did not apply and seeking attorney fees. Jackson asserted once again that Action's claim was precluded by accord and satisfaction and waiver. The district court initially determined that the doctrine of accord and satisfaction issue was not properly before it because Jackson had not filed a cross-appeal; however in a footnote it ruled that the doctrine would not apply even if properly raised. The district court further determined that the voluntary payment rule did not apply. After comparing the purposes of the voluntary payment and officious intermeddler defenses, the district court ruled that the original contract for payment for Intermountain's services was unambiguous and enforceable against Jackson. The district court reversed the magistrate, granted summary judgment in favor of Action, and imposed attorney fees against Jackson pursuant to the contract and I.C. § 12-120(3). Jackson appeals.

II.
STANDARD OF REVIEW

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *Losser v. Bradstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760 (2008). We first note that summary judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986). When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994).

The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and does not in and of itself establish that there is no genuine issue of material fact. *Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust*, 147 Idaho 117, 123, 206 P.3d 481, 487 (2009); *Moss v. Mid-Am. Fire & Marine Ins. Co.*, 103 Idaho 298, 302, 647 P.2d 754, 758 (1982); *Lawrence v. Hutchinson*, 146 Idaho 892, 897, 204 P.3d 532, 537 (Ct. App. 2009). This Court must evaluate each party's motion on its own merits. *Intermountain Eye & Laser Ctrs., P.L.L.C. v. Miller*, 142 Idaho 218, 222, 127 P.3d 121, 125 (2005); *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 360, 93 P.3d 685, 691 (2004); *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001); *Stafford v. Klosterman*, 134 Idaho 205, 206, 998 P.2d 1118, 1119 (2000); *Kromrei v. AID Ins. Co.*, 110 Idaho 549, 551, 716 P.2d 1321, 1323 (1986). Moreover, the filing of cross-motions for summary judgment does not transform the court, sitting to hear a summary judgment motion, into the trier of fact. *Moss*, 103 Idaho at 302, 647 P.2d at 758. Where, as here, the parties have submitted stipulated facts prior to filing cross-motions for summary judgment, the only issue before the court is a matter of law. *McKay v. Ireland Bank*, 138 Idaho 185, 187, 59 P.3d 990, 992 (Ct. App. 2002). The standard of review on the motion for summary judgment

does not change; we review the stipulated facts to determine if either party is entitled to judgment as a matter of law. *Id.*

III.
DISCUSSION

Jackson asserts that the district court erred by reversing the magistrate and granting Action's motion for summary judgment. The district court ruled in favor of Action primarily based on contract principles. Jackson's contract with Intermountain unambiguously states that he is responsible to pay "all charges whether or not paid by said insurance." Intermountain agreed to provide services to Jackson, and Jackson agreed to pay for those services, regardless of his insurance company's decision to provide benefits. The obligations of the parties are clearly identified, and the terms are not susceptible to conflicting interpretations. Absent an applicable defense, Jackson is liable to Action under the terms of the contract.

A. The Doctrine of Voluntary Payment

Jackson defends against Action's claim for enforcement of the contract by asserting the doctrine of voluntary payment. He contends the district court erred by concluding the doctrine did not apply. Action, as the assignee of Intermountain, is subject to any defenses Jackson could have asserted against Intermountain. *See United States v. Everett Monte Cristo Hotel, Inc.*, 524 F.2d 127, 132 (9th Cir. 1975); RESTATEMENT (SECOND) CONTRACTS § 336 (1981); *cf. Foley v. Grigg*, 144 Idaho 530, 533, 164 P.3d 810, 813 (2007) ("An assignee takes the subject of the assignment with all the rights and remedies possessed by and available to the assignor."); *Lockhart Co. v. B.F.K. Ltd.*, 107 Idaho 633, 635, 691 P.2d 1248, 1250 (Ct. App. 1984) ("When one party to a contract is notified that the other has assigned part or all of his interest in the contract, the first party owes the assignee whatever performance the assignor was entitled to receive, within the scope of the assignment."). Therefore, if Jackson can show a viable defense to paying Intermountain, it will preclude recovery by Action.

The doctrine of voluntary payment provides that a person cannot, by way of set-off or counterclaim, or by direct action, recover back money voluntarily paid with full knowledge of the facts and without any fraud, duress or extortion, where no obligation to make such payment existed. *Breckenridge v. Johnston*, 62 Idaho 121, 133, 108 P.2d 833, 838 (1940). Where no obligation exists, the demand voluntarily met can be considered unjust or illegal. *Kimpton v. Studebaker Bros. Co.*, 14 Idaho 552, 560, 94 P. 1039, 1041 (1908).

In *Kimpton*, Studebaker Brothers was the payee on a note signed by Kimpton. Studebaker Brothers negotiated the note to Nixon. Studebaker Brothers failed to mark on the note that Kimpton had already made a payment, although Nixon was aware that the payment had been made. Nixon later presented the note to Kimpton and demanded payment of the full face amount of the note, which Kimpton voluntarily paid. Kimpton then filed suit against Studebaker Brothers to recover the payment that had been made to them but not indicated on the note. The Idaho Supreme Court adopted reasoning from Ohio applying the voluntary payment doctrine.

> The reason of the rule and its propriety are quite obvious when applied to a case of payment upon a mere demand of money unaccompanied with any power or authority to enforce such demand, except by suit at law. In such case, if the party would resist an unjust demand, he must do so at the threshold. The parties treat with each other on equal terms, and if litigation is intended by the party of whom the money is demanded, it should precede payment.

Kimpton, 14 Idaho at 560, 94 P. at 1042. Kimpton knew he was due a credit on the note, yet he voluntarily paid Nixon the full original amount on the face of the note. Therefore, he could not recover the amount of his over-payment from Studebaker Brothers because his voluntary payment to Nixon was made with full knowledge that it was not owed, and was not made under fraud, mistake, duress or extortion. *Id.*

So far as the stipulated facts here reveal, when Intermountain returned funds to Lifewise, Intermountain was acting without full knowledge of the situation.[1] Intermountain did not know the terms of the insurance contract between Jackson and Lifewise or what insurance benefits either Lifewise or the automobile insurer were obligated to provide. The stipulated facts do not show that Intermountain had a way to determine the precise extent of Jackson's insurance benefits. Therefore, Jackson has not shown that Intermountain's refund to Lifewise was made with full knowledge that no obligation to make the "payment" existed. The district court did not err by ruling that Jackson was not entitled to summary judgment based on the doctrine of voluntary payment.

B. The Doctrine of Accord and Satisfaction

Jackson asserts that the district court erred by refusing to consider whether Action's claim was precluded by the doctrine of accord and satisfaction. Because Jackson did not file a

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[1] For purposes of this analysis, we assume, without deciding, that Intermountain's return of funds to Lifewise qualifies as a payment.

cross-appeal, the district court held that the issue of accord and satisfaction was not properly preserved for appeal. However, a cross-appeal is required only when the respondent seeks to change or add to the relief afforded below, but not when it merely seeks to sustain a judgment for reasons presented in the trial court which were not relied upon by the trial judge but should have been. Idaho Appellate Rule 11(g); *Walker v. Shoshone County*, 112 Idaho 991, 993, 739 P.2d 290, 292 (1987). Jackson sought no affirmative relief "by way of reversal, vacation or modification of the judgment" when he resumed asserting the defense of accord and satisfaction before the district court; therefore, the "issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal." I.A.R. 11(g).

Accord and satisfaction is a method of discharging a contract or cause of action whereby the parties agree to give and accept something in settlement of the claim or demand of the one against the other and perform such agreement, the "accord" being the agreement and the "satisfaction" its execution or performance. *Strother v. Strother*, 136 Idaho 864, 867, 41 P.3d 750, 753 (Ct. App. 2002). Idaho Code Section 28-3-310 provides that an accord and satisfaction can arise through the payment of an instrument that was tendered in full satisfaction of a disputed claim.[2] It states:

> (1) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.
>
> (2) Unless subsection (3) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

I.C. § 28-3-310. Accord and satisfaction is an affirmative defense, and the burden of proving the elements of an accord and satisfaction is upon the party relying thereon. *Clay v. Rossi*, 62 Idaho 140, 108 P.2d 506 (1940); *Holley v. Holley*, 128 Idaho 503, 507, 915 P.2d 733, 737 (Ct. App. 1996).

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[2] Jackson also argues for application of the common-law doctrine of accord and satisfaction, *see, e.g.*, *Knoke v. Charlebois*, 107 Idaho 427, 690 P.2d 362 (Ct. App. 1984), but Action contends that Jackson failed to raise that claim below. Having reviewed the record, we conclude the claim was not raised below, thereby precluding its application on appeal.

The stipulated facts here do not show that Jackson is entitled to summary judgment based on an accord and satisfaction because the "accord" is ambiguous regarding the scope of the claim that the parties intended to settle. From the stipulated facts, it is not clear whether the parties understood Jackson's check to be "full and final payment" of only the amount then being claimed by Intermountain or of any and all claims that could arise from Intermountain's past services provided to Jackson. The parties present different interpretations, with Action maintaining that the accord could have settled only the claim for payment that Intermountain then possessed and could not have been intended to settle a claim that came into existence later when Intermountain acceded to Lifewise's request for refund of its January 2002 payment. Jackson, on the contrary, contends that the check was given in final settlement of all claims that Intermountain would then or thereafter possess arising from its provision of medical services to Jackson. Because the only written expression of the accord terms is a cryptic letter from Jackson's attorney transmitting the payment check and stating, "Enclosed is a check in the amount of $1,449.43 representing full and final payment on behalf of Don Jackson," the accord is ambiguous.

Intermountain's release of its medical lien does not resolve this ambiguity. A release of lien is a type of contract in which one party makes a complete abandonment of a cause of action. *Robert Comstock, LLC v. Keybank Nat'l Assoc.*, 142 Idaho 568, 571, 130 P.3d 1106, 1109 (2006); *Lomas & Nettleton Co. v. Tiger Enter., Inc.*, 99 Idaho 539, 542, 585 P.2d 949, 952 (1978). However, a release only includes those claims and demands then due and within the contemplation of the parties. *Comstock*, 142 Idaho at 572, 130 P.3d at 1110. A demand of which the parties were ignorant when the release was given is not as a rule embraced therein, unless it falls within the fair terms of the release. *Id.* The release of medical lien was filed May 22, 2003, but the claim for $1,112.68 did not arise until September of the following year. Thus, the lien release does not appear to constitute an abandonment of the then-unknown future claim. It does not preclude, however, the possibility that the future claim was settled through the accord that arose from the tender, acceptance and payment of the settlement check from Jackson's attorney.

There exists a genuine factual issue as to whether the accord was intended to cover only the amount asserted by the lien, or all amounts Jackson could potentially owe in the future. Therefore, summary judgment based on the defense of accord and satisfaction is not permissible.

IV.
ATTORNEY FEES

Both Action and Jackson seek attorney fees on this appeal. Jackson also contests the district court's award of attorney fees to Action in the intermediate appeal below. Attorney fees are only available to the prevailing party. Idaho Rules of Civil Procedure Rule 54(e)(1). Because neither party prevailed on cross-motions for summary judgment, neither is a prevailing party, thereby precluding an award of attorney fees at this juncture in the proceedings.

V.
CONCLUSION

The district court did not err by reversing the magistrate's order granting Jackson's motion for summary judgment on the voluntary payment rule. However, the district court did err by ordering entry of summary judgment in favor of Action. The parties' stipulated facts leave unresolved genuine issues of material fact which require fact-finding. The district court's order reversing the magistrate's grant of summary judgment to Jackson and ordering summary judgment for Action is reversed, and the case is remanded for further proceedings consistent with this opinion. Neither party is entitled to attorney fees or costs on appeal.

Chief Judge LANSING and Judge GRATTON **CONCUR**.